

The National Funeral Directors Association ("NFDA") welcomes the invitation of the United States Senate to submit written comments on issues relating to funeral service and the Funeral Rule. These written comments will supplement the oral testimony that NFDA will provide at the April 11, 2000 hearing to be conducted by the Special Committee on Aging.

I. THE NATIONAL FUNERAL DIRECTORS ASSOCIATION

NFDA, as the largest association of funeral directors in the United States, serves as the national representative of the funeral profession. It has been in continuous operation since 1882 and currently represents nearly 14,000 licensed funeral directors and mortuary science students throughout the country. NFDA provides extensive government relations, education and communication programs on behalf of the nation's funeral profession.

A. Structure of NFDA.

NFDA is a non-profit Section 501(c)(6) corporation with its national headquarters in Brookfield, Wisconsin. In addition to the nearly 14,000 licensed funeral directors and students that are members, state funeral associations in each of the 50 states and the District of Columbia belong to NFDA. NFDA and the state funeral associations compliment each other in assisting their members with issues that impact funeral service on a national, state and local basis.

NFDA is governed by three bodies, each comprised of volunteer members. The first, the House of Delegates, consists of 600 members who meet at the Annual Convention of the Association to elect officers, consider amendments to the Constitution and Bylaws, and deal with other NFDA business. The second body, the Policy Board, is comprised of one representative from each of the 51 state associations. Its primary responsibility is to develop policy positions on issues impacting the funeral profession. The final body, the Executive Board, consists of the five officers elected by the House of Delegates and four At-Large Representatives elected by the Policy Board. It implements the programs and policies adopted by the House of Delegates and the Policy Board.

In addition to the three governing bodies, NFDA has four standing committees to deal with education, communication, government relations and operations. It also employs 42 full-time staff members in its Brookfield, Wisconsin headquarters and its Washington, D.C. office.

B. Mission and Role of NFDA.

The mission of NFDA, as set forth in its Constitution, is as follows:

"The mission of NFDA is to enhance the funeral service profession and promote quality service to the consumer. NFDA is dedicated to fulfilling its mission by: promoting national leadership and a national identity for the profession; developing effective partnerships with State Associations; and providing direct service to Practitioners."

The first role of NFDA is to be the national representative and voice for the funeral profession in the United States. As the largest funeral service organization with a membership that encompasses funeral service professionals from small family-owned funeral homes as well as the large publicly-traded funeral service companies, NFDA is uniquely positioned to serve that role.

The second major function of NFDA is to provide its members with the knowledge and skills necessary to insure the delivery of ethical, professional, and dignified care to the families they serve. The

Association is the leading national resource for funeral service education, information and research that our members need to successfully carry out their duties.

A third overriding function of NFDA is to assist our members in service to their communities. The funeral director should be the primary resource to his or her community in the areas of funeral and memorialization, preplanning, continuing care, dying, death and bereavement. NFDA carries out this function by providing our members with the information and tools they need to fulfill their role as the community resource.

The final role of NFDA is to promote governmental policies, legislation and regulations that support the funeral profession, protect the consumer, and safeguard the environment. As the leading resource in consumer, safety and health, and environmental issues related to funeral service, NFDA works with legislators and regulators to craft and implement policies that best serve the public and the profession.

II. THE FUNERAL RULE AND OTHER REGULATORY ISSUES

In this Section II, NFDA addresses the Committee's request for information on the issues our members face in complying with the Funeral Rule and other government regulations.

A. The Funeral Rule.

NFDA has been a key participant through all facets of the development and implementation of the Funeral Industries Practices Regulation ("Funeral Rule") by the Federal Trade Commission. NFDA's original opposition to the Funeral Rule was grounded in its long-held belief that regulation of the funeral industry is more effective on a state level where it has been traditionally exercised. Nevertheless, despite that opposition, NFDA took the lead in educating the nation's funeral directors regarding their duties and obligations under the Funeral Rule once it was implemented.

During the past 16 years that the Funeral Rule has been in effect, NFDA and its members have recognized that the Rule provides benefits to consumers and funeral directors alike. The three written price lists required by the Funeral Rule have become effective tools that funeral directors use in explaining to families the various components of the funeral and available options. The detailed price itemization imposed by the Funeral Rule has also encouraged funeral homes to closely analyze their cost centers and set prices that provide fair and appropriate cost recoveries. As a result, the Funeral Rule has made funeral directors better businessmen and women, and made the families they served informed consumers.

In addition to the informational benefits of the Funeral Rule, it also provides funeral consumers with basic rights and protections. Consumers have the right to detailed and itemized price lists before they make any purchase decision. They are given an itemized statement of the goods and services they selected when the purchase is made. Consumers are also given written disclosure of information that helps them understand the legal and practical aspects of a funeral that may impact their purchase decisions. They are protected against misrepresentations that may mislead them into purchasing unnecessary funeral goods or services. Finally, they are given the unfettered right to use merchandise purchased outside of the funeral home and have the funeral director service that merchandise without any restrictions or fees.

Unfortunately, while every consumer who buys funeral goods and services from a funeral director is entitled to the comprehensive set of rights and protections afforded by the Funeral Rule, no such safeguards are given to consumers who purchase funeral goods or services from third party sellers. The

Funeral Rule only covers sellers of funeral goods **and** services. Therefore, cemeteries, retail casket stores, and direct disposition companies can escape the coverage of the Funeral Rule by selling either funeral goods **or** funeral services, but not both. As a result, any funeral consumer purchasing from those sellers receives none of the protections and safeguards mandated by the Funeral Rule.

This loophole in the Funeral Rule was not readily apparent when it was drafted 25 years ago because at that time funeral goods were primarily sold only by funeral directors. The funeral industry has changed dramatically since that time with the emergence of third party sellers. In today's market, consumers are purchasing funeral goods or funeral services from an increasing array of sellers, none of which are governed by the Funeral Rule. The loophole created 25 years ago when the Funeral Rule was drafted has become immense and left tens of thousands of funeral consumers without safeguards and protection.

Last year, the FTC commenced a second review of the Funeral Rule. In its written and oral comments to the Commission, NFDA has voiced its strong support to retain the Rule and strengthen it to meet the realities of today's funeral market. NFDA is advocating that the FTC extend the protections of the Funeral Rule to cover all consumer transactions involving the purchase of funeral goods **or** services. This simple modification to the Funeral Rule will close a loophole that has deprived many funeral consumers of the protections and informational benefits now enjoyed by those consumers who deal with funeral homes.

B. Compliance with the Funeral Rule.

The Funeral Rule is a complex and detailed regulation that imposes a substantial set of obligations and duties on funeral directors. Funeral directors are required by the Funeral Rule to present price information to families at times and in situations that can appear very insensitive to a grief-stricken family. For the most part, funeral directors have learned how to balance compassion with compliance. Nonetheless, the Funeral Rule does present daily challenges to funeral service professionals.

NFDA has worked with the FTC to address Funeral Rule compliance issues. During the first review process and in the current review, we have requested several modifications to the Funeral Rule to clarify vague and imprecise requirements of the Rule. NFDA has also pointed out those provisions of the Funeral Rule that result in insensitive treatment of consumers.

In some instances, the FTC has responded to our concerns and made modifications. For example, when NFDA showed that certain telephone price disclosures were awkward and oftentimes misinterpreted by consumers, the FTC eliminated the requirement.

In the current review process, NFDA has addressed two compliance issues - - the distribution requirements of the general price list and the handling of third party merchandise. We are requesting the FTC to modify the imprecise terminology now used by the Funeral Rule in describing when a general price list must be presented to a consumer. NFDA is also asking for a set of compliance guidelines from the FTC to assist funeral directors in understanding their obligations in accepting and servicing third party merchandise.

NFDA believes that its own educational programs and the enforcement efforts of the FTC have raised compliance to a high level. In fact, the FTC reports a 90% compliance level in its undercover shopper program. As detailed in Section IV of these comments, NFDA continues to seek improvements in the compliance level through a number of educational programs and initiatives provided to our members.

C. Other Federal Compliance Issues.

In addition to the Funeral Rule, NFDA members encounter on a daily basis an increasing array of federal regulations that impact funeral service. These include the following:

- OSHA regulations, including the Bloodborne Pathogens Standard, Hazard Communication Standard, Formaldehyde Exposure Standard, and the proposed Ergonomics regulation.
- IRS regulations on the taxation of preneed trust funds.
- EPA regulation of air and water emissions from crematories and funeral homes.
- Health and Human Services regulations that govern burial fund exclusions for SSI and Medicaid beneficiaries who preplan their funerals.
- Veterans Administration regulations governing funeral and burial benefits for veterans.
- ADA requirements on the accessibility of funeral homes and the provision of services to disabled members of the public.
- Wage and Hour compliance issues that apply to funeral homes.

NFDA, through its government relations program, works with federal regulators on a daily basis to address the concerns of funeral service. The Association also employs significant resources in its education and communication programs to keep our members abreast of the current federal regulations and their compliance obligations.

D. State Law Compliance.

The state regulation of funeral service primarily involves licensing and preneed issues. The majority of state law legislation and regulation issues are handled through the 51 state funeral associations. NFDA serves as a resource in compiling state funeral regulations and facilitating the exchange of information among the state associations. We also have served as a forum that our members can use to adopt positions regarding state law issues. For example, the NFDA Policy Board, which is made up of 51 representatives from each state and the District of Columbia, has recently enacted policies on educational standards for funeral directors and reciprocity issues. It has also compiled and approved the Consumer Preneed Bill of Rights that is discussed in Section IV below.

While state regulation of funeral service has increased over the years, especially in the area of preneed, NFDA does not believe that our members have encountered any significant state law compliance problems. The state funeral associations provide government relations and education programs to assist funeral professionals understand their responsibilities and maintain compliance. We believe the partnerships between NFDA and its state associations have resulted in a high level of compliance by funeral directors with federal, state and local laws and regulations.

III. RESOLUTION OF CONSUMER COMPLAINTS

A. Level of Consumer Complaints.

The Special Committee on Aging indicated in its March 15, 2000 correspondence to NFDA that it is investigating the funeral and cemetery industries because of serious allegations that have been directed at those industries. NFDA welcomes that scrutiny and urges the Committee to examine the documentary

evidence that exists regarding the level of consumer complaints.

The United States General Accounting Office ("GAO"), in response to a request by the Special Committee on Aging, examined the level of consumer complaints in the death care industry. In its research, the GAO obtained data from the FTC, the Better Business Bureau, the Funeral Service Consumer Assistance Program, and other consumer agencies. It also received information from funeral regulatory agencies in the five states of California, Florida, Maryland, New York and Texas. Those five states are significant not only for the size of their populations, but also because California, Florida, New York and Texas require funeral directors to print on price lists and/or preneed contracts given to consumers the names, addresses and phone numbers of state agencies where consumers can lodge complaints against funeral directors.

The findings of the GAO were presented to the Committee in a report dated September, 1999 ("GAO Report"). In the Report, the GAO concludes that the level of consumer complaints regarding death care industries was low. A succinct summary of the GAO findings is set forth in this excerpt from the Report:

"Although the range of complaints was broad, we did not find numbers of complaints at FTC, nongovernmental organizations, and selected state agencies. Generally across all of the types of organizations we contacted, most officials and representatives said that they received few complaints about death care. Reasons provided for the low number of complaints included the personal or emotional component of the death care situation and the fact that consumers may have been satisfied with the goods and services received." GAO Report at p. 10.

It is important to note that the GAO surmised that one reason for the low level of consumer complaints may be the "personal and emotional component of the death care situation." The GAO reported that although the FTC is not aware of any studies that supports the premise that consumers do not complain because of embarrassment or emotional reasons, there was anecdotal support for that belief.

If embarrassment and emotional concerns inhibited consumers from complaining to government regulators and consumer agencies, one would still expect to see evidence of dissatisfaction in consumer attitudinal surveys. If this "unreported" wave of consumer dissatisfaction with the death care industry truly existed, it would be uncovered when funeral consumers were asked in surveys to evaluate their personal experiences with funeral directors and funeral services they purchased.

Fortunately, such a survey exists. The Funeral and Memorialization Council ("FAMIC"), a death care industry group of which NFDA is a member, retained Wirthlin Worldwide to conduct comprehensive surveys of consumers of death care services and products. Wirthlin Worldwide, an independent consumer survey company, has performed the survey in 1990, 1995 and 1999. An executive summary of the 1999 survey is attached as Exhibit A.

The 1999 Wirthlin survey reported a 5:1 ratio of positive to negative comments when funeral consumers were asked their attitudes toward the people and businesses in the death care industry. As Wirthlin reported, "this exceeds what is normally considered to be a healthy ratio of 3:1 for a typical industry." Wirthlin also reported that overall consumer satisfaction with services received at funeral homes is high with 80% of consumers reporting they would not change any aspect of their personal experiences.

The funeral profession is proud of these high levels of consumer satisfaction. Given the significant emotional stake involved in a funeral and the many details that must be attended to in a short time frame under difficult circumstances, the level of consumer satisfaction with the funeral profession and funeral arrangements is significant. It certainly undercuts any anecdotal claims of consumer dissatisfaction.

B. Resolution of Consumer Complaints.

With over 2.3 million funeral and disposition services conducted each year in the United States, it is inevitable that some consumer complaints will arise. The vast majority of these are resolved by the funeral homes' staff. In a profession where economic survival depends largely upon return business from families serviced in the past and positive word-of-mouth referrals, the funeral professional makes every effort to resolve consumer concerns.

When asked why they selected a particular funeral home, approximately 70% of consumers in the 1999 Wirthlin survey cited previous experience with the funeral home, location, reputation of the funeral home, and recommendations of others as the most important factors. Clearly, any consumer dissatisfaction with service, prices or personnel will lead to a quick erosion of a funeral home's market share. The funeral director has an overriding economic incentive to insure consumer satisfaction with the funeral experience.

For those cases where a consumer complaint is not resolved by the funeral home, NFDA has established the Funeral Service Consumer Assistance Program ("FSCAP"). FSCAP, which is recognized by the FTC as a consumer assistance program, has been helping funeral consumers for over 20 years. It operates independently of NFDA through funding provided by the Funeral Service Education Foundation, a 501(c)(3) educational organization started by NFDA.

Consumers who contact FSCAP through its toll-free number are given advice and recommendations for resolving their complaints. If the FSCAP representative cannot resolve the concerns of the consumer, he or she will refer the consumer to appropriate state or local government agencies. FSCAP also provides free consumer information regarding funeral services, preneed planning and bereavement. A copy of the FSCAP brochure is attached as Exhibit B.

FSCAP receives approximately 1,000 calls a year from consumers, of which 23% are complaints regarding a funeral home and 77% are requests for consumer information.

IV. PROGRAMS TO PROTECT FUNERAL CONSUMERS

NFDA and the Funeral Service Education Foundation ("FSEF") provide many programs that directly or indirectly assist at-need and preneed funeral consumers.⁽¹⁾ As detailed below, most of these programs are directed toward education of the funeral consumer either directly or through funeral directors. NFDA strongly believes that the best protection consumers can have is to be well informed.

Classification of NFDA's and the FSEF's programs fall under three general subheadings: consumer education, funeral director information, and funeral director educational programs. Under each subheading, NFDA has provided a brief summary of the programs and how they assist consumers. If more information is needed on any of the programs, please contact Robert E. Harden, NFDA Executive Director.

A. Consumer Programs

1. NFDA Website. NFDA's Website at nfda.org contains a plethora of information regarding funeral arrangements, consumer information and NFDA. It also provides excellent links to other funeral service organizations, government agencies and consumer advocacy groups. On a monthly basis, NFDA's Website receives approximately 250,000 hits with an average of 40,000 user sessions.

NFDA has attached as Exhibit C several downloaded pages from the Website's Consumer Resources section. Information on preneed planning, the preneed consumer bill of rights, funeral prices, funeral options and links to more sources of consumer information are all available. NFDA believes that the Website has been a very valuable source of information to funeral consumers.

2. Family Contact Program. Funeral homes may subscribe to a family contact series through NFDA. Under the program, consumers receive surveys from the funeral home following funeral services. The survey asks questions regarding consumer satisfaction with all aspects of the funeral arrangement. The completed surveys are mailed directly to NFDA, which tabulates the results and issues a report to the funeral home. This direct consumer feedback is an invaluable resource for the funeral homes that participate in the Program.

3. FSCAP. As indicated in Section III above, FSCAP not only offers consumer assistance with problems, but it also provides consumer information regarding funeral service. FSCAP provides free consumer education brochures including *The Buyer's Guide to Preplanning*, *Planning a Funeral*, and *Understanding Grief*. Over 750 consumers received information from FSCAP last year.

4. Funeral Home Libraries and Resource Centers. In order to assist their families and serve as a community resource on death and bereavement issues, many funeral homes have developed resource centers and lending libraries of books, videotapes and brochures for consumers. FSEF currently offers 200 titles covering death, dying and bereavement issues as well as consumer brochures on making at-need and preneed funeral arrangements. Many funeral directors routinely purchase these consumer informational materials in order to stock their funeral home resource centers.

Educational Information Provided to Funeral Directors.

NFDA and FSEF provide a continuous stream of educational information to funeral directors through several different mediums. Educational information includes the following:

1. The Director Magazine. NFDA's official monthly publication, *The Director* magazine is sent to more than 13,000 funeral directors nationwide. A large part of *The Director* is dedicated toward informing funeral directors of their compliance obligations under federal and state laws and regulations. In addition, feature articles and regular columns educate readers on how to improve their business and management skills as well as the care they provide to the families they serve. *The Director* also lists the numerous educational programs and services provided by NFDA, FSEF, state funeral associations, and other funeral service organizations.

2. Special Interest Sections. An important membership benefit provided by NFDA is enrollment in a Special Interest Section. Members can choose to belong to the Business and Management section, Service to Families section, and/or the Technical Operations and Compliance section. Each member is given a free enrollment in the section of his or her choice and the option to belong to two or more sections for a nominal fee. Each section has its own newsletter which provides up-to-date information on funeral home operations, legal and regulatory compliance, and excellence in consumer service.

3. NFDA InfoCentral. Through its InfoCentral program, NFDA offers members a series of regulatory compliance manuals on the FTC Funeral Rule, employer obligations, the ADA, and OSHA requirements. Additional materials address state legal requirements dealing with preneed, licensing, and transportation issues. Information is also available regarding funeral customs of different religions and nationalities. The materials provided through InfoCentral can be accessed by members through NFDA's Website, by NFDA's automatic faxback system, or by telephone orders. In addition, the regulatory

compliance materials are included in the NFDA Directory of Members which is sent to each member on an annual basis.

C. Education and Compliance Programs.

NFDA, through its own education department, and the FSEF offers a broad selection of education and compliance programs to funeral directors. Our audience for these programs continues to expand as NFDA taps into online learning, at-home study courses, and teleconferences. A listing of these programs include the following:

1. NFDA Online Learning Center. NFDA is now offering online continuing education credit via the Internet for licensed funeral directors. The debut course is entitled "Ethical Decisionmaking for Funeral Service Professionals." Other courses this year will include a series on bereavement covering traumatic grief and how children grieve. The online learning center is open to NFDA members and non-members.
2. Annual Convention. At its Annual Convention, NFDA offers convention workshops that are attended by an average of 5,500 attendees. Typically, close to 50 different workshops will be offered each year on a variety of different topics that impact funeral service.
3. Teleconference. For the past two years, NFDA has offered a series of teleconferences throughout the year on compliance issues and other topics. These two hour seminars which include question and answer periods, offer a convenient way for funeral home and their staff to attend educational programs without leaving the office.
4. NFDA Compliance Program. In 1996, NFDA started the Consumer Assurance Program ("CAP") to assist its members with FTC Funeral Rule compliance. CAP participants were required to have their price lists reviewed for compliance with the Funeral Rule, complete annual training of the funeral home staff, and agree to abide by a price list distribution policy.

In 2000, NFDA will be rolling out the successor to the CAP Program that will focus not only on the FTC Funeral Rule, but other federal regulatory requirements. The compliance series will consist of approximately 16 program offerings that will deal with compliance with the Funeral Rule, OSHA requirements, employment practices, ADA compliance, environmental practices and potential liability concerns. This new education program will be delivered via audiotapes, videotapes, teleconferences and NFDA's online learning center. Participants that complete the program will receive a certificate of completion on an annual basis.

5. FSEF Home Study Program. The FSEF offers distant learning opportunities via books, audiotapes and videotapes. Current courses address subjects on grief and bereavement, better understanding the consumer, creating meaningful funeral ceremonies, cultural diversity, funeral etiquette, the Funeral Rule, enhancing communication skills, and professional image. There are approximately 400 participants per year.

6. Funeral Rule Offenders Program. The Funeral Rule Offenders Program ("FROP") was developed in conjunction with the FTC in 1996. As a result of the FTC's undercover shopper enforcement program, a number of funeral homes were being charged with Funeral Rule violations. While civil enforcement actions against these funeral homes punished them for the violations, they did nothing to educate the funeral home staff to avoid future violations. To remedy this situation, NFDA proposed to the FTC that a program which emphasized education rather than punishment would be more beneficial to consumers and funeral service. The FTC agreed and the FROP Program was developed as an alternative program

that the FTC could offer a funeral home in lieu of a civil enforcement action under the Funeral Rule.

There are approximately 100 participants currently in the FROP Program. The program requires a five year commitment. To be eligible for the program, the funeral home must pay a voluntary contribution to the government and agree to abide by all the terms of the program. Funeral homes in the program have their price lists reviewed for compliance with the FTC Funeral Rule and participate in annual training via teleconferences and course materials.

7. Certified Preplanning Consultant Program. Through the FSEF, a national certification program is available for consultants who assist consumers in preplanning and/or prefunding funerals ("CPC"). Applicants seeking CPC certification must attend a two-day educational workshop that incorporates materials on preplanning, funding mechanisms, contract terminology, ethical standards, knowledge of the Funeral Rule, customer service (with specific information on aging consumers), and the value of the funeral.

There are currently 310 certified CPCs in the program since it began in 1996. It is projected that another 125 candidates will be certified in 2000. Recertification is required every four years.

Pursuit of Excellence. The Pursuit of Excellence Program ("POE") is an NFDA-sponsored national program that recognizes funeral homes for their excellence and achievement in the following eight areas: education, compassionate service, technical skills, community and professional service, library or media resources, professional development, in-staff training, and public and community relations.

D. The Protective Value of Education and Information.

NFDA believes that the best protection available to consumers is information and education. A well-informed consumer is a protected consumer.

Funeral information and education is currently being delivered to the consumer through a number of avenues: the Internet, consumer groups, the media, the government, and funeral service organizations. However, the most widely used method to convey this information to the consumer is the funeral director. While a growing number of consumers tap different sources for information on funerals, the overwhelming majority of consumers still look to their funeral director for this information.

This is the reason that the education and compliance programs that NFDA and FSEF provide to funeral directors are so important to consumer protection. By educating the funeral director, NFDA and FSEF educates the funeral consumer.

V. CONCLUSION

NFDA appreciates this opportunity to submit written comments and to present testimony at the April 11, 2000 hearing before the Senate Special Committee on Aging. We are confident that the Committee will reach the same conclusions borne out by the GAO Report and the Wirthlin surveys: that funeral service professionals provide families with a level of service and care that produces a high degree of consumer satisfaction.

At the same time, NFDA knows that it must continue to educate members and work with government officials to maintain and improve funeral service compliance with federal and state regulations. We fully recognize that the best interests of the funeral service profession can only be achieved by pursuing the best interests of the funeral service consumer. NFDA is committed to this mission.

¹ Since NFDA is an association of licensed funeral directors, it does not address the concerns of cemetery consumers.